

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

RAYMOND J. BERGERON DAVILA,

Plaintiff,

v.

BARBARA A. TEELING, ANTHONY
LACOMBE, and JOHN DOES,

Defendants.

Case No. 17-CV-521-JPS

ORDER

On October 16, 2017, the Court ordered Plaintiff to respond to Defendants' discovery requests within fourteen days, under pain of dismissal of his case for failure to prosecute it. (Docket #19). On December 12, 2017, Defendants filed a motion to dismiss, stating that Plaintiff had not responded in accordance with the Court's order. (Docket #20). Seven days later, Plaintiff filed a dual response to Defendants' motion and a motion to dismiss his case voluntarily. (Docket #23). Plaintiff states that he "realized he may have failed [to exhaust] his administrative remedies and because of this he moves to dismiss his case[.]" *Id.* He further requests that Defendants' motion be denied as moot. *Id.*

Both motions may be granted. By failing to materially oppose Defendants' motion, Plaintiff concedes that he did not respond to their discovery requests as ordered. Further, if a prisoner litigant does not exhaust his administrative remedies prior to filing suit, his case must be dismissed without prejudice. *Ford v. Johnson*, 362 F.3d 395, 401 (7th Cir. 2004); *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002). Plaintiff's

motion admits that he did not exhaust his administrative remedies. On the basis of both motions, this action will be dismissed without prejudice.

Accordingly,

IT IS ORDERED that Defendants' motion to dismiss (Docket #20) be and the same is hereby **GRANTED**;

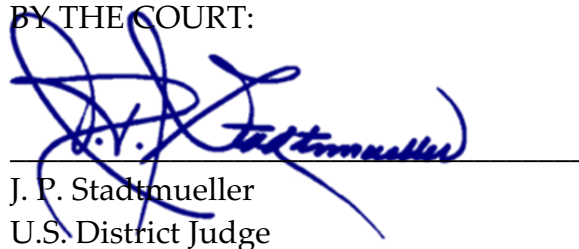
IT IS FURTHER ORDERED that Plaintiff's motion to dismiss (Docket #23) be and the same is hereby **GRANTED**; and

IT IS FURTHER ORDERED that this action be and the same is hereby **DISMISSED without prejudice**.

The Clerk of the Court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 21st day of December, 2017.

BY THE COURT:



J. P. Stadtmueller
U.S. District Judge